

"Federation Corner" column  
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### **M-NCPPC unreliable in enforcing Forest Conservation Law**

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Forests covered 45% of Montgomery County in 1973 and 28% in 2000, a loss of 54,000 acres - or 2.4 billion square feet of forest - in 27 years, with more losses since. In 1991, the state required the county to pass a Forest Conservation Law (FCL) that could be stronger, but not weaker, than the state law. Unfortunately, this FCL has merely slowed the rate of forest loss as it is full of exemptions or formulas that result in fewer trees getting planted than are cut down.

The Environmental Planning section of M-NCPPC enforces the FCL. While this staff is very dedicated to their jobs, some take a weak FCL and make it weaker still by unpredictably "interpreting away" forest or forgetting to or refusing to enforce the law. An inspector, a supervisor or a staff attorney also has the power to stop enforcement.

In 2004, Redskins owner Dan Snyder cut down 155 larger trees and numerous smaller trees and shrubs on about 2 1/2 acres between his Potomac house and the C & O Canal without getting an FCL permit. As settlement with M-NCPPC, Snyder agreed to replant 1000 trees and shrubs on his property, protect three acres offsite, put an easement on 5 acres of his property, and pay \$37,000. In addition, the County Council used the Snyder case to justify a significant increase in FCL civil penalties for cutting trees without a permit.

In 2001, an owner of another property in Potomac at the intersection of River and Chapel Roads, ordered the complete clearing of 1.24 acres of forest and the clearing of an additional 2.54 acres of understory trees and shrubs, also without a permit. The FCL requires a permit to clear more than 5,000 square feet of forest. In March 2002, the owner was fined and immediately paid \$1000. In May 2002, the owner agreed to waive all right of appeal and by 12/31/02, to record a forest conservation easement onsite and to either pay a civil penalty of \$21,600 or to spend that full amount to either reforest at least 1.7 acres offsite or protect 3.4 acres of existing forest off-site.

In October 2002, the owner paid \$15,300 to reforest 1.7 acres offsite. In May 2005, the owner sought an FCL permit to clear an additional 1/2 acre of forest. When staff learned in July 2005 that the terms of the settlement had not been fulfilled, including that the agreed upon amount had not been spent and the owner had not recorded the required easements, it denied the permit. By January 2006 the owner, while still seeking to clear more forest, asked to amend the settlement by offering to spend an additional \$38,000 to reforest an additional two acres offsite, to purchase about 1/4 acre of a neighbor's adjacent property to then plant in forest trees, but not understory trees and shrubs, and to only put an easement on the neighbor's land. The owner argued that this was a better solution because "The highest and best use of this Property is as a stately residence in keeping with the neighborhood," an argument not even used by Dan Snyder to justify his position.

Although M-NCPPC is refusing to agree to these new terms, it has yet to enforce the 4-year old settlement that was signed without a right of appeal by the owner, a forgotten settlement that might never have been rediscovered if the owner had not sought to clear more forest.

In March 2005, a new owner in Ashton began cutting down trees on his property. His neighbor, Steve Kanstoroom, filed a complaint, and the clearing stopped, with promises by M-NCPPC to resolve the problem. When tree clearing began again in December 2005, Kanstoroom discovered that his neighbor

now had a permit to build a commercial garage larger than the existing house in the rural residential area and had inaccurately claimed an agricultural exemption to clear an area smaller than what was actually cleared. When an M-NCPPC inspector came out and found that there was no FCL violation, Kanstoroom began an odyssey that still continues today that has involved numerous county and state elected and appointed officials and agencies.

He originally created his own private forest preserve by buying 30 acres of forest and 15 acres of conservation easements from neighbors. This new neighbor's clearing of forest, including his forest, all without a permit, so close to and in full view of his house, threatens his plans. He has asked for help from all quarters and has spent much to try to protect the value of his investment. M-NCPPC staff "interpret away" forest by claiming that many cut trees were not part of a forest.

Most recently, to conclusively prove to the M-NCPPC inspector and his superiors that this neighbor had cleared far more than 5,000 square feet of verifiable forest, Kanstoroom spent \$3000 to hire an experienced aerial survey team that is used by and recommended by M-NCPPC.

Despite the statements of these and other acknowledged experts that 20,000 square feet of forest has been recently cleared, M-NCPPC officials continue to claim that far less has been cleared, that there is little, if any, violation, and that these experts are wrong and are inherently biased because Kanstoroom hired them. This has been a far worse outcome than the 2 Potomac cases, despite overwhelming evidence collected by Kanstoroom.

An owner of 1.33 acres in the Hillmead section of Bethesda is seeking approval to subdivide her property for new houses. Some residents of the neighborhood want M-NCPPC to instead buy the property to add to the adjacent neighborhood park because they claim it is a forest with specimen trees that sits on a floodplain. Last week, two of these residents told the Planning Board that several MNCPPC staff had treated them with disdain and did not take their concerns seriously.

They had to hire their own tree expert who stated that there was forest and that the forest conservation plan documents of the property owner were full of inaccuracies, including the location and health of specimen trees. These residents also alleged that some of these documents had been unlawfully certified through the cutting-and-pasting of previous signatures. As a result of their allegations, the Planning Board announced that it would suspend action on the subdivision until its legal staff had investigated the allegations.

These four examples show an M-NCPPC staff able to rigorously enforce the FCL but also able and even willing to forget or overlook apparent violations while rigorously opposing the efforts of county residents equally determined to see that the FCL is enforced. Those who want a stronger FCL that will stop the continued loss of forest cover also see that there is much to do to change the attitude and behavior of certain M-NCPPC staff and leaders who cannot now be relied upon to consistently enforce either a weak or a strong FCL.